UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

TRINIDAD LOGISTICS COMPANY, L.P.,

and

CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 414, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Cases 25-CA-28087-1

25-CA-28109-2 25-CA-28304-1 25-RC-10104

Joanne C. Mages, Attorney, of Indianapolis, Indiana, Counsel for the General Counsel. M. Scott Hall, Attorney, and Michael A. Scheer, Attorney (Barnes and Thornburg), of Fort Wayne, Indiana, for the Respondent. Brian Lytle, Business Representative, Fort Wayne, Indiana, for the Charging Party

DECISION

STATEMENT OF THE CASE

MARK D. RUBIN, Administrative Law Judge: This matter was tried in Fort Wayne, Indiana, on December 16 and 17, 2002, based upon charges filed on March 6, 2002 (25–CA–28087–1), April 2, 2002 (25–CA–28109–2), and July 31, 2002 (25–CA–28304–1). The charge in Case 25–CA–28087–1 was amended on July 31, 2002. The charge in Case 28304–1 was amended on September 13, 2002. All of the unfair labor practice charges were filed by Chauffeurs, Teamsters and Helpers Local Union No. 414, a/w International Brotherhood of Teamsters, AFL-CIO (Charging Party or Union) against Trinidad Logistics Company, L.P. (Respondent).

The Regional Director's complaint, dated October 30, 2002, alleges that the Respondent violated Sections 8(a)(1) and (3) of the Act by implementing various changes to its employee attendance policy and implementing a disciplinary appeal process during the course of the Union's organizing campaign, and violated Section 8(a)(1) of the Act by engaging in various actions during the course of the Union's organizing campaign, including threatening its employees with an increase in required work rates, job loss, and loss of wage and benefit increases if they selected the Union to represent them, telling its employees that the Union could force them to strike and fine all of them up to \$2,000 if they crossed the picket line and returned to work, promulgating and enforcing a no-distribution policy and a rule which prohibited employees from placing union literature in the break room and on the employee bulletin board in the break room, and interrogating employees concerning their union activities and sympathies.

On November 8, 2002, the Regional Director, in Case 25-RC-10104, issued a report on objections, order consolidating cases, order directing hearing, and notice of hearing, which consolidated said case, and the objections filed by the Union, with the instant unfair labor

practice cases. The included objections essentially mirrored some of the unfair labor practice allegations.¹

At the trial, the parties were afforded a full opportunity to examine and to cross-examine witnesses, to adduce competent, relevant and material evidence, to argue their positions orally and to file post-trial briefs. The parties all waived oral argument and, with the exception of the Union, filed post-trial briefs, which have been carefully considered. Upon the record as a whole, upon my observation of the testimonial demeanor of the witnesses, and upon careful consideration of the briefs of the Respondent and counsel for the General Counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

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At all times material, the Respondent has maintained an office and place of business in Fort Wayne, Indiana, called the warehouse, where it is engaged in the operation of a warehouse servicing various K-Mart stores. During the 12 month period ending February 28, 2002, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 to enterprises located within the State of Indiana, which enterprises purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Indiana. It is admitted, and I find, that the Respondent is now, and has been at all

¹ On June 24, 2004, I issued an order granting counsel for the General Counsel's motion 25 dated May 21, 2004, to approve the Union's withdrawal of its objections, and remanded Case No. 7-RC-10104 to the Regional Director for further processing. The background for the Union's withdrawal request is as follows: Subsequent to the close of the hearing I convened two conference calls among all of the parties in order to discuss possible settlement scenarios prompted by intervening events involving Respondent's business. These two conferences 30 occurred in March 2003, and on January 23, 2004. At both conferences all parties were fully represented by their respective counsel and representatives. During the first conference all parties agreed that the Fort Wayne facility at which the alleged unfair labor practices and representation election occurred had been closed by Respondent and no employees remained employed at said facility. The parties, further, verbally agreed to the outlines of an informal 35 settlement agreement that included the posting of a notice dealing with all of the complaint allegations, and also agreed to engage in additional negotiations subsequent to the conference for the purpose of finalizing details of the settlement, including exact language of the notice. Subsequently, when no settlement was presented to the undersigned, a second conference call took place on January 23, 2004. During this conference Respondent's attorney asserted that to 40 his knowledge his client no longer existed and that despite numerous efforts he could establish no contact with his client. In view of these circumstances, Respondent's attorney stated that he did not know whether he still had the authority to enter into a settlement or even to continue representation of Respondent. Both counsel for the General Counsel and the Union's representative indicated they had no information as to Respondent's existence, or any reason to 45 disbelieve the representations of Respondent's counsel. During this conference, the Union's representative informed counsel for the General Counsel that the Union would, subsequent to the conference, submit a withdrawal of its objections to the representation election, which withdrawal counsel for the General Counsel's motion of May 21, 2004 was based upon. Respondent's attorney voiced no opposition to the Union's stated intent to withdraw its 50 objections. Further, reference to "current" circumstances or employees reflects the status existing at the time the record closed.

times material, an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

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It is admitted, and I find, that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

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A. BACKGROUND

The Respondent, a corporation, operates a warehouse in Fort Wayne, Indiana, the only facility involved in this proceeding, and a warehouse in Grand Rapids, Michigan. Both warehouses supply only K-Mart stores, with the Fort Wayne facility supplying dry goods, and the Grand Rapids warehouse perishable items. About 250 employees work in the Fort Wayne warehouse picking and shipping goods, in the following classifications: sanitation employees, forklift drivers, reclaim employees, shipping employees, loaders, inventory control employees. and selectors. The Respondent assumed operation of the Fort Wayne warehouse from Harvest Logistics, an unrelated company, in August 2001. In July 2001, the Union initiated an organizing campaign, which continued after the Respondent assumed operation of the warehouse, and resulted in a petition for an election being filed on April 9, 2002². General Manager Mike Cutright is in charge of the warehouse's day-to-day operations, and assumed said position in January 2002. Previously Cutright occupied the position of warehouse manager. He is also responsible for operations at the Grand Rapids warehouse. The Respondent hired Scott Selby as human resources manager on September 10, 2001. Other warehouse supervisors at times material are Mark Cobb, Joe Dunaway, Craig Dubie, and James Booker.

During the course of the Union's campaign, it frequently distributed campaign literature in the area of the warehouse. Sometimes the literature was placed in the break room, and sometimes distributed outside the plant and left in the break room by employees. Also during the course of the campaign, The Respondent held mandatory weekly campaign meetings for employees to discuss its opposition to the organizational efforts, in addition to its regular daily meetings. The Respondent's campaign meetings for employees took place every week subsequent to the Union's filing of its petition. The Respondent divided the employees into groups of about 25 to 30, held the meetings in the training room, and essentially repeated the content of the meetings for the various groups. Employee questions during each meeting could vary the content. Certain of the allegations discussed below occurred in connection with the union literature in the break room, and the Respondent's campaign meetings with its employees in the training room.

B. UNFAIR LABOR PRACTICES

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INTERROGATION

Thomas Green, a former sanitation employee of the Respondent, who was discharged about May 13, 2002, testified as to two conversations with General Manager Cutright.

According to Green, on April 29 Cutright asked Green if he wanted to make "more money or

² All dates are in 2002, unless otherwise indicated.

less," because if he voted for the Union, he'd make less because of union dues. Cutright then asked Green if he had made up his mind as to "who he was voting for." Green testified that this conversation took place in the morning, while Green was performing cleaning chores in the warehouse, "under the racks." Green testified that he just laughed in response. Green also testified to a similar conversation about April 22 that occurred in the morning outside the men's bathroom in the warehouse, and that fellow employee Rosa Nichols³ was present. This time, according to Green, Cutright asked him if he was going to vote for the Union. Green said he just laughed in response. Green testified that he laughed in response because he didn't think the information was any of Cutright's business and he was frightened. Green was in the habit of wearing a "Vote Yes for Teamsters" sticker at work during the election campaign, but testified that he didn't remember if he wore one on the dates of the conversations with Cutright. In his affidavit, Green stated that he had a sticker on his name tag at the time of the April 22 conversation, but at trial he testified that what he meant in his affidavit was that he wore stickers around that period of time, and that he wore a sticker "every time I got one" but didn't get one every day.

Cutright admitted speaking to Green three or four times in the warehouse, but denied questioning Green concerning his views on the Union or asking him if he was going to vote for the Union.

STATEMENTS THAT UNION COULD FINE EMPLOYEES WHO CROSS PICKET LINE

Current employee Danny Piersall, a selector, testified that he attended one of Respondent's campaign meetings on May 16, and that Cutright, at the meeting, told the assembled employees that if you were a Union member and you crossed the petition (sic) line that would strike (sic) then you could be fined, the Union could fine you." Piersall testified that Cutright also said that one particular person was fined up to \$2,000 for crossing the picket line. Cutright testified that he, in fact, discussed with employees the Union's ability to fine individuals who crossed the Union's picket line only if they were union members, and that he mentioned fines up to \$1,000, which amount, he testified was taken from the affidavit of a union official in an unrelated case.

On May 21, the Respondent's owner, John Anderson, addressed assembled employees at one of the Respondent's campaign meetings. By stipulation, the parties agreed that Anderson told the assembled employees that if they went out on strike they have "zero income" from the Respondent, that the "Union has a small strike allowance to give you but it's pretty small, "that it might be good for you to strike then and try...try and get somethin' better for yourself." Anderson further told the employees that "but, there might be somebody in this room who needs a paycheck. As you saw, by the materials Mike (Cutright) presented, if you, because of your family, the needs you got, you gotta feed other people, or you got health problems, you have any need for money and you have to have a pay check. If you cross that picket line at work what can the union do? The union can fine you. By law, the union can fine you up to the full amount you earn by crossing the picket line. You saw on that presentation, they fined a lot of people \$1,000 right here in Fort Wayne that crossed the picket line."

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³ Nichols did not testify.

THREATS CONCERNING "PICK RATES"

The Respondent, in addition to the weekly campaign meetings, held regularly scheduled meetings for order selectors and forklift operators on the first shift to address production and safety issues. These were short meetings held at about 8:45 a.m. in the break room, immediately after the first break, generally attended by supervisors Craig Dubie or Mark Cobb, and occasionally attended by Cutright and/or Human Resources Manager Selby. Current forklift operator Stuart Baker testified that at one of these meetings attended by about sixty employees, some time in late March or April, with Selby and supervisors Dubie and Cobb present, Cutright told the employees that "if the hourly work force were to organize as a recognized union, that he would guarantee that the pick rates would go up." Baker testified that the rates referred to "pick rates," or the rates at which order selectors were required to pull product. Current forklift operator Jason Brown placed the meeting in the cafeteria⁴, between April 1 and 3, with about 55 to 60 employees and supervisors Dubie and Cobb present. Brown testified that at the time of the meeting he was an order selector, and that at the meeting Cutright told the employees that as far as he knows, "a lot of folks are looking forward to the union as far as getting in a union and that a union would not help and he guaranteed us that if we were to vote a union in, our pick rates would go up." Former employee Barbara Lee Eckert testified that she was present at the meeting, which she placed at about April 4 or 5 in the break room, and that Cutright, Cobb and 20-25 employees were present. According to Eckert, in response to an employee question about the pick rate, Cutright "took his right fist and put into his left hand and he said if you guys get the union in here, I can guarantee that your rate will go up."

Cutright testified that he remembered the subject of pick rates coming up at a meeting about April 1, that somebody asked a question about pick rates. According to Cutright, "The question was, engineered standards, how would it affect the pick rate." Cutright testified that he said that for certain orders the pick rate would probably increase if the Respondent were to go to engineered standards, but that neither the question nor the response had anything to do with the Union. Cutright denied that he ever told employees at a meeting that if the Union came in he guaranteed that pick rates would go up, but that, in fact the Respondent had been gradually raising pick rates. Cutright acknowledged that he discussed engineered time standards at more than one meeting, but couldn't remember specific dates. Selby testified that he attended an employee meeting about April 1, that an employee asked about how pick rates were formed and about engineered time studies, and that Cutright answered the question by describing engineered time studies and commenting that if the Respondent utilized such time studies, the pick rates would be higher. Selby denied that Cutright said anything to connect advent of the Union with increased pick rates, or threatened to impose engineered rates.

THREATS CONCERNING JOB LOSS

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Former employee Antonio Wallace, an order selector from July 2001 to his discharge in July 2002, testified to attending about four of the Respondent's campaign meetings for employees in the warehouse's main conference room, with about 30 to 35 employees present at each meeting. Wallace testified that at one 45-minute meeting he attended in the second week of April, Anderson and Cutright spoke to the assembled employees, Selby was present, and a movie was shown about a strike at another employer, Super Value, in 1986. According to Wallace, after the movie was shown, Cutright addressed the employees and told them that if the

⁴ The break room and the cafeteria are, in fact, the same room. The break room consists of about 20 tables, three bulletin boards including a cork board, a kitchenette area, doors leading to the warehouse hallway, and a back hallway to the conference room and offices.

Respondent's employees chose the Union, they would end up striking, just as shown in the movie, that the Respondent could not afford to pay union wages, and that was why Super Value had lost its contract and had to lay off its employees. According to Wallace, Cutright told the employees, "That is why employees from Super Value were currently with us because they had been laid off from Super Value because they could not afford to pay them union wages — because the Union would cause you to lose your job." Wallace testified that Cutright also said that if the employees chose the Union and there was a strike, "nine out of ten of you will be replaced." Finally, Wallace testified that Cutright related to the employees a story about a union in North Carolina where the employees voted in a union over a year ago, but there was still no collective-bargaining agreement: "He was telling us that could very easily happen to us. Even if we got the Union, we would not have a contract right away. It could be a year or two down the road before we got a contract."

Cutright testified that he never threatened any employee with loss of job if they voted the Union in, but did not otherwise directly respond to Wallace's testimony either in respect to what Cutright said at the meeting, or the details of the meeting itself. Selby testified, but did not directly respond to Wallace's testimony concerning the meeting.

THREATS CONCERNING LOSS OF WAGE AND BENEFIT INCREASES

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Current employee Danny Piersall, an order selector, testified that he was present at the campaign meeting held by the Respondent at which the Respondent presented the Super Value video, but left before the video itself was shown. Thus, Piersall was present for the beginning of the meeting, but not the portion of the meeting that Wallace testified about. Piersall remembered the meeting as occurring about May 16, the same meeting at which Cutright made comments about strikes and picket lines, about a month after the date on which Wallace placed the meeting, and that supervisors/managers Cutright, Selby, and Cobb were present. Piersall testified that prior to the video, Cutright told the employees that wages and benefits would be put on hold at the time a union was voted in, and that "if you were entitled to any pay increases or anything that those would be on hold and the possibility that you would not receive those pay increases." Piersall also testified that Cutright said, "if at the time the contract was accepted, if there was not a clause in there that you would possibly never, ever get those pay increases retroactive or the possibility that you could even be at a lesser rate than what you were being paid before the contract." Piersall testified, without contradiction, that employees then currently received wage increases after their first 90 days, 1 year, and 18 months. Finally, Piersall testified that at this meeting, Selby did not speak about benefits and wages, and Cutright did not refer any questions about benefits and wages to Selby.

Cutright broadly denied that he ever threatened employees with loss of wage or benefit increases if they chose the Union as their collective-bargaining representative, but was not questioned as to the specifics of Piersall's testimony. Selby testified that he was present at the May 16 meeting in order to operate the Power Point presentation that accompanied Cutright's talk. Selby testified that Piersall asked a question as to wages if the Union were to be voted in. "I think the way he said it was...I'm coming up on a year, do I still get my year increase." Selby testified that Cutright initially answered by saying that things would remain status quo, and then turned the question over to Selby. Selby testified, "and so I explained, you know, that any of that that's been published, we've already announced to you, would still happen, but, certainly, through negotiations that wages and benefits could go up, they could go down, could stay the same."

REMOVAL OF UNION CAMPAIGN LITERATURE FROM BREAK ROOM

The Respondent's solicitation/distribution policy set forth in its handbook, at all material times, is as follows: "Team members may not solicit fellow team members for any reason during the working time of either the team member doing the soliciting or the team member being solicited. Working time does not include lunch periods, authorized rest breaks, or periods before or after scheduled hours. Team members may not distribute literature of any kind in work areas at any time, or in nonwork areas (i.e. parking lots, break room, restrooms) during their work time or the work time of those being solicited." The complaint alleges that, despite the facially valid wording of the rule, the Respondent took actions and made statements in respect to distribution, by supervisors and managers set forth below, which violated Section 7 rights.

CUTRIGHT

Current employee Stuart Baker testified that he placed union campaign literature in the break room, generally on each table and on the cork bulletin, on a weekly basis, usually Tuesday. Baker testified that on an occasion sometime in April or May, he placed about 30 to 40 pieces of union literature on the tables in the break room prior to his 6 a.m. start time, and that at about 6:15 a.m. he observed, through the break room windows, Cutright in the break room, walking from table to table, placing the literature into stacks. Baker testified that he watched Cutright for about 30 seconds collecting the stacks of literature, until the tables were completely clear of the union literature, but that he didn't observe what Cutright eventually did with the literature. Finally, Baker testified that when he returned to the break room at 8:30 a.m. for his first scheduled break, he saw none of the union literature he had placed there earlier.

Baker also testified as to a second occasion during April or May when he placed about 20 to 30 pieces of union literature on the tables in the break room prior to 6 a.m. Baker testified that when he went to the break room for his 8:30 a.m. break, he noticed that all the literature had disappeared, so he replaced the missing literature with more copies. At about 9 a.m., while riding his forklift in the area of the break room, Baker saw Cutright, through the break room windows, collecting the literature he had just replenished. Baker did not observe what Cutright did with the literature. When Baker went back to the break room for lunch at 11:30 a.m., there were no union flyers in the break room. Finally, Baker testified that at one of the campaign meetings the Respondent held for its employees, he asked Cutright why the union flyers were being confiscated. According to Baker, Cutright responded that, "he had the facts and that is all we needed. We could come to him with any questions that we had."

Former employee Barbara Lee Eckert testified that on May 22, the day before the Board election, she stopped into the break room at about 1:30 to 2 p.m., and observed Cutright and sanitation supervisor Joe Dunaway picking union flyers up from the tables and throwing them away, and that Cutright took a union flyer down from the uncovered cork bulletin board, a flyer that Eckert had previously placed on the board. Eckert testified that after they removed the union flyers, she observed Cutright and Dunaway place the Respondent campaign flyers on the tables. Eckert estimated that she saw about 70 to 80 union flyers removed, and replaced with about 100 to 150 Respondent flyers. Eckert testified that throughout the time she worked in the warehouse, she had noticed other items posted or distributed in the break room including pizza and chicken restaurant flyers either posted on the cork bulletin board or lying on the tables, a computer sale flyer posted on the bulletin board, and a K-Mart bake sale poster hanging by the break room door.

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Current employee Piersall testified that in early to mid-May he observed Cutright pick up a stack of 50 to 75 union flyers in the break room and throw them away.

At trial, Cutright generally denied that he prohibited employees from placing union literature in the break room, but did not respond to Eckert's testimony as to the May 22 incident, Piersall's testimony as to removing 50 to 75 union flyers from the break room, nor Baker's testimony as to Cutright, on two occasions, removing union literature from the break room. Cutright denied that he ever told Baker that he didn't need to see union literature because he had all the facts, or that he implemented or enforced a new no-distribution policy on May 22 that would prevent employees from placing union literature in the break room. Supervisor Dunaway did not testify.

SHIFT SUPERVISOR JAMES BOOKER

Eckert also testified that on April 12, in the early morning, she placed about 70 flyers on the tables in the break room, that at about 7:40 a.m., while she was in the break room, selector supervisor James Booker entered the break room, picked up one of the union flyers and read it, then walked from table to table picking up the flyers, and threw them into the garbage can. Eckert testified that when she asked Booker what he was doing, he replied, "Cutright does not want these in here. They are solicitation... I asked him, well, what about all these other solicitations in here; because there was like, bake sales and somebody selling a car and a computer and they were all hanging around the bulletin boards...He said well, Mike does not want these in here because they are union solicitations and he went over and threw them away."

Former employee Antonio Wallace testified that about May 20 or 21, while he was working the warehouse aisles, Booker approached him and gave him a pro-Respondent leaflet. Wallace testified that he asked Booker "why can we not pass out flyers but you are approaching me while I am working, giving me a flyer but we cannot do this." According to Wallace, Booker "responded that he was just doing what he was told to do. He was just doing his job."

Booker denied that he gathered and disposed of union flyers in the break room on April 12, or that he told Eckert that he was instructed to throw away union flyers. Booker testified that the only conversation he ever had with Eckert was to say "Hi" in passing. When asked on cross-examination as to whether he threw away union flyers in the break room, Booker testified that he did so in the process of straightening the break room: "We picked up stuff that was left by the associates after they were completely finished reading them, whether it be on the tables, the counter, the floor," and that "They would just lay them down out there finished. Some kept – the ones that wanted to, they kept them and the ones that wanted to threw them down on the table on the floor." Booker testified that he cleaned the break room every day and, hence, disposed of union literature every day. Booker also testified that in addition to himself, other supervisors including Mark Cobb and Chuck Easterday cleaned the break room after the morning employee meeting: "we were, like, stuff that was left on the tables, whether it be trash, like pop cans, wrappers." Booker did not testify as to the May 21 or 22 conversation described by Wallace in his testimony.

HUMAN RESOURCES MANAGER SCOTT SELBY

Current employee Stuart Baker testified that during April and May, he observed Scott Selby remove union literature from the break room on two occasions. On the first occasion Baker, while driving near the break room on his forklift, looked through the break room windows,

and saw Selby collecting union literature that Baker had placed in the break room 15 minutes earlier: "He made a stack of literature at one table, took that stack to another table, proceeded to add to the stack." Baker did not observe what Selby did with the literature, but when Baker entered the break room a few hours later, all the union literature was gone. Baker testified that on a second occasion he had placed union literature on the tables in the break room and posted a flyer on the bulletin board at about 5:50 a.m. A few minutes later, while walking by the break room, Baker observed Selby for about 20 seconds. According to Baker, Selby "was making stacks of the literature on one table, taking that stack to another table, adding all of the literature." Baker did not observe what Selby did with the literature, but upon returning to the break room a little while later for first break, Baker noticed that all the union literature had disappeared from the break room.

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Selby did not directly refute Baker's testimony as to gathering and removing union literature from the break room on two occasions. Selby testified that "once or twice" during the union campaign he saw union flyers on the cork bulletin board, and that he removed the literature pursuant to the Respondent's solicitation policy which states, in pertinent part, "Any unauthorized literature found or posted in the facility will be immediately removed and discarded."⁵ Selby testified that he removes anything "that's up there that he didn't put up there or somebody didn't ask for permission to put up there." Selby testified that he interpreted the Respondent's no-solicitation policy to preclude posting of materials in the plant, whether to a bulletin board, wall, or vending machine window, but not to preclude the handing out of union literature on the street or in the break room. "I mean what they were doing on the floor would have been a violation, but the way that I looked at it was that...it was more trouble than it was worth to try to police that." Selby testified that he had previously removed menus and coupons from the cork bulletin board because he had not posted them and they were posted without his permission, that on one occasion he had posted a notice on the cork bulletin board concerning donations for an employee who was victimized by a home fire, on another occasion posted a solicitation for a March of Dimes bake sale promotion, and on a third occasion denied an employee request "to do a Toys for Tots drive." Finally, Selby testified that he never received a request for a posting of union flyers.

SUPERVISOR MARK COBB

Baker also testified that on two occasions in April and May he observed Cobb removing union literature from the break room. Baker testified that on the first occasion he placed about 30 to 40 union flyers on the break room tables and posted one flyer on the break room bulletin board just prior to the start of work, that a few minutes later, while walking down the aisle near the break room, he noticed Cobb collecting the literature from the tables, and that when he returned to the break room at about 8:30 that morning he noticed that the union flyers he left on the tables and posted on the bulletin board were no longer there. Baker testified that on the second occasion, he placed the union literature in the break room at the start of the workday, that when he returned to the break room at 8:30 a.m. the literature was no longer there, so he placed more literature in the break room, and that about 20 minutes later while walking by the break room he observed Mark Cobb collecting the newly placed union literature: "I saw Mark Cobb take the union literature from one table, put it into a stack and take that stack to the next table. Take the union literature from that table and add to his initial stack." Baker testified that he did not observe what Cobb did with the literature, but when Baker returned to the break room at about 11:30 a.m., there was no union literature. Finally, Baker testified that during his

⁵ Counsel for the General Counsel does not contend that Respondent's rule violates Section 7 rights.

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employment at the Respondent he has observed restaurant menus posted on the break room bulletin board from February 2002 to the present.

Current employee Jason Brown, an order selector during material times, testified as to two occasions, about 2 weeks before the Board election, that he observed Cobb disposing of union flyers. On both occasions Brown was leaving the break room at the conclusion of the regular morning employee meeting when he noticed Cobb pick up a union flyer, read it, then toss the flyer into the garbage. Brown testified that on the first occasion Cobb disposed of a "few" flyers, the second occasion five or six flyers, and that Cobb took the flyers from a desk in the break room.

Former employee Antonio Wallace testified that on May 22, the day prior to the election, he placed union literature in the break room at about 6 a.m. Shortly thereafter, Wallace, through the break room windows, noticed Cobb picking up the literature and throwing it into the trash. Upon observing this, Wallace entered the break room and asked Cobb why he had placed Wallace's union literature in the trash, and told Cobb: "It is not fair for you to come behind me and throw it in the trash before anybody had an opportunity to read it." According to Wallace, "He said he was sorry. He was doing what he was told to do. He took it out and gave it back to me." Wallace testified that the literature consisted of quotes from famous people concerning labor laws. Finally, Wallace testified that both before and after the Union filed its petition, he observed various items posted on the cork bulletin board in the break room including advertisements for a car show and United Way bake sale, and menus for various restaurants.

Current employee Piersall testified in early May he observed Cobb in the break room "going around to the tables and collecting up all the union information, flyers that had been brought in and throwing it away." Piersall testified that he observed Cobb through the break room windows, while Piersall was working.

On direct examination, Cobb admitted removing union literature from the break room. "After our meetings, people would go back to work and I'd make a general clean-up of the cafeteria. I still do that to this day." Cobb testified that he and other supervisors, even prior to April, have "always picked up plates, cups. Whatever's left behind, throw away. Left the area clean." Cobb explicitly denied that he ever picked up information left in the break room by Antonio Wallace, giving the literature back to Wallace, and telling him he "couldn't do that or anything like that." On cross-examination, Cobb admitted that some of the union literature he disposed of may have been placed in the break room by Wallace.

IMPLEMENTATION OF NEW ATTENDANCE POLICY

Complaint paragraph six alleged, and, with one clarification, the answer admitted that about March 1, the Respondent implemented various changes to its attendance policy including: implementing a perfect attendance reward program whereby certain qualified employees are eligible for a monthly prize drawing; allowing employees to take personal time in 1-hour increments rather than 1-day increments; reducing the amount of time required to give notice before utilizing personal time; and deleting the oldest attendance point from the attendance records of employees who have 3 months of perfect attendance. While the complaint also alleges a change in respect to reducing the amount of points assessed employees for tardiness and early departures from work, the answer admits that the change simply increased the amount of time missed before a point is assessed, rather than decreasing the amount of points assessed. Thus, there is no dispute that there were changes, and little dispute as to the exact nature of the changes, including their, generally, favorable impact upon employees.

As noted, the Respondent took over operation of the warehouse in August 2001. The Respondent's first attendance policy was implemented on September 9, 2001. Scott Selby became human resources manager on September 10, 2001. Selby testified that he was aware of the union organizational effort at the time of his hire because the Union was handing out flyers at the time of his job interview. Selby announced the new attendance policy to employees at a regular employee morning meeting in late February 2002, and it became effective on March 1. Selby testified that a final decision to change the attendance policy was made in January 2002, and that a final decision as to what the new attendance policy would be was made in the time frame of late January to early February in discussions with Cutright.

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Selby testified that from the day he began working for the Respondent he "had issues" with the original attendance policy, particularly as to its impact on remunerating discharged employees for banked personal time, the amount of points assessed in certain situations, and because, "I didn't feel like it gave the employees a true opportunity to use that time that was supposed to be personal time." Cutright and Selby both testified that they had heard employee complaints as to the original attendance system since the first system was initiated. Selby testified that he began working on a new attendance policy and took a first draft to then Vice President Ira Pennington in December 2001, and also discussed his thoughts with Cutright at about the same time. Selby's introduced computer records indicate that he began a first draft of the document on December 11, 2001, a second document with attendance and personal days options on January 8, 2002, and a third document which, with one exception⁶, accurately reflected the implemented changes, on January 30, 2002. Shortly after January 30, Selby and Cutright met with the supervisors and informed them of the contemplated changes. While as noted the implemented changes were generally favorable to employees, one of the changes was not favorable and resulted in personal days resetting on January 1 of each year so that any time accumulated but not used by January 1 or at the time of employment separation, was lost to the employee.

IMPLEMENTATION OF EMPLOYEE DISCIPLINE APPEALS PROCESS

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At the same February meeting at which Selby announced the new attendance policy to employees, Cutright also announced a new discipline appeal procedure, the "TLC Employee Appeals Process." Employee Piersall testified, "We were told about an appeals process that was going to be put together and that was about it. There was nothing really enlightened on it except for that it was going to be close to the Union grievance procedure." Unlike the attendance policy, the new appeals process was not actually implemented until April 1. Selby testified that the implementation of the appeals process was delayed to April because employee participants had to be secured and trained and because the Respondent "wanted that one month to make sure...take a look at things, make sure we were being consistent in the application of our policies, because that's what the appeal process really judges you on, whether or not you're consistent."

The appeal procedure is a three-step process for employees to file complaints "involving the interpretation and/or application of policies, procedures, established practices, past precedents, and/or work rules affecting personnel." The final step provides appeal to the warehouse manager, or the Employee Appeal Panel consisting of two managers and three "employee peers" who will "issue a final and binding decision." According to the policy, "Panels may review management's actions to ensure the application of policy and practice was followed

⁶ The document mentioned a change as to Respondent's treatment of tardies as opposed to absences, which was dropped before implementation of the final plan.

correctly, fairly, and consistently. If they find otherwise, they have the authority to make remedies consistent with company practices and/or policies."

Cutright testified that in deciding to implement the new appeals process he was "concerned about our consistency in our rules and making sure that our supervisors were consistent in the application of those." Selby testified that he began discussing an employee appeals process with former Vice President Pennington sometime in December 2001 or January 2002, and that the Respondent's appeals process is essentially identical to an appeals process utilized at Selby's former employer, before he began working for the Respondent. Selby further testified that the decision to implement the appeals process "happened in January," and that "as far as settling in on what those changes [from his former employer's appeals process] were going to be, it was right at the end of January and the beginning of February." Selby testified that Cutright made the final decision to implement the process, but there is no exhibit or testimony to point to a particular meeting, conversation, or decisional document. Selby admitted he was aware of union organizational activity during the process of developing and implementing the new appeals procedure, but denied that the presence of the Union or its organizational activities played any role in the Respondent's implementation of the appeals process.

20 C. ANALYSIS

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INTERROGATION

Complaint paragraph 5(g) alleges that about April 29, Cutright interrogated employees. I find that, as testified to by former employee Thomas Green, Cutright, on April 29 asked Green if he wanted to make "more money or less," because if he voted for the Union, he'd make less because of union dues, and that Cutright then asked Green if he had made up his mind as to who he was voting for. I further find that on April 22, Cutright asked Green if he was going to vote for the Union. Both conversations occurred in the warehouse, the first while Green was working, the second outside the warehouse restroom, in the presence of another employee. Cutright denied questioning Green as to the Union, but admitted speaking to Green three or four times in the warehouse, and did not deny having conversations with Green on April 22 and 29. I credit Green, who impressed me as a forthright, consistent witness, and, further, there is little doubt that the conversations with Cutright made a significant impression on him. Further, Green, unlike Cutright, had no pecuniary or other vested interest in the outcome of this litigation, and nothing to gain if the Union prevails.

Nevertheless, I do not find that either of the two conversations during which Cutright questioned Green were coercive and, hence, I do not find a violation of Section 8(a)(1). Thus, Green testified that he was in the habit of wearing a prounion sticker to work during the election campaign, and may have worn such a sticker on the dates of the two conversations with Cutright. Whether Green wore a sticker on the particular days of the conversations or not, he publicly identified himself as a supporter of the Union.⁷ Under these circumstances, including

⁷ In her brief, counsel for the General Counsel notes that "Cutright himself testified that he had no recollection of Green wearing Union paraphernalia during the April 2002 timeframe." She, thus, argues: "Respondent cannot use *Rossmore House* to refute a violation if the questioner himself...was not aware of Green's stand vis-à-vis the Union." However, Cutright's testimony does not deal with whether or not he knew of Green's prounion leanings. That question was neither asked nor answered. As noted, Green's testimony demonstrated that he made no effort to cover up his sympathies for the Union, and frequently wore a prounion sticker Continued

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Green's testimony that he "laughed" in response to Cutright's questions, I cannot conclude that Cutright's questioning of Green violated the Act. See *Tribune Co.*, 279 NLRB 977 (1986), and *Rossmore House*, 269 NLRB 1176 (1984), aff'd. 760 F.2d 1006 (9th Cir. 1985).

THREATS—PICK RATE

I credit the testimony of employees Stuart Baker and Jason Brown, and former employee Barbara Lee Eckert, that at one of the Respondent's election campaign meetings in early April, Cutright threatened the assembled employees that if they chose the Union to represent them, the Respondent would increase "pick rates," or the rates at which selectors were required to pull product. Baker, Brown and Eckert all testified in a direct, unhesitant manner, responding forthrightly when questioned on cross-examination. I take particular note that none of the three stood to gain financially as a result of their testimony, and that Baker and Brown testified adversely to the Respondent, notwithstanding they were still in the Respondent's employ. See *Georgia Rug Mill*, 131 NLRB 1304, 1305 fn. 2 (1961), enfd. as modified 308 F.2d 89 (5th Cir. 1962). By so threatening its employees, the Respondent violated Section 8(a)(1).

THREATS—JOB LOSS

I credit the testimony of former employee Antonio Wallace that at one of the Respondent's campaign meetings in the second week of April at which an antiunion movie was shown, Cutright told the assembled employees that if they chose the Union, they would end up striking like shown in the movie, that if there was a strike "nine out of ten you will be replaced," that the Respondent could not afford to pay union wages, and that "the Union would cause you to lose your job." Here again, Wallace, with nothing to gain financially as a result of the trial, testified without hesitation and with good recall, both on direct and cross-examination. Contrariwise, Cutright, while testifying that he never threatened an employee with job loss if the Union was voted in, did not directly deny or respond to Wallace's testimony as to what Cutright said at the meeting. Selby, present at the meeting, was not directly questioned as to Wallace's testimony. I find that Cutright's statements were not carefully phrased on the basis of objective fact to convey the Respondent's belief as to demonstrably probable consequences beyond his control. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). Instead, Cutright's comments to the assembled employees violate Section 8(a)(1) as lacking an objective, factual basis. See *Kelly Brothers Sheet Metal, Inc.*, 342 NLRB No. 9 (slip opinion, pgs 1–2) (2004).

THREATS—LOSS OF WAGE AND BENEFIT INCREASES

I credit the testimony of current employee Danny Piersall that at one of the Respondent's election campaign meetings, on May 16, Cutright told the assembled employees that "if you were entitled to any pay increases or anything, that those would be on hold and the possibility that you would not receive those pay increases." Piersall testified in a direct manner on both direct and cross-examination, with good recall. His status as a current employee with no direct financial incentive to testify, lends credence to his testimony and supports his credibility as a witness. See *Georgia Rug Mill*, supra. Contrariwise, Cutright broadly denied he threatened employees with loss of wage or benefit increases, but was not questioned as to the specifics of Piersall's testimony. While Selby essentially denied Piersall's testimony as to Cutright, I credit Piersall for the reasons set forth above. Inasmuch as Piersall testified, without contradiction, that new employees receive wage increases at the 90 day, 1 year, and 18 month anniversary, I

in the warehouse. Clearly, the weight of evidence suggests his status was well known by supervision.

find that Cutright's statements constituted a threat that these scheduled wage increases would be withheld if the employees voted the Union in and, hence, violated Section 8(a)(1). See *First Student, Inc.*, 341 NLRB No. 19, fn. 1 (2004).

EMPLOYEES ADVISED UNION COULD IMPOSE FINES FOR CROSSING PICKET LINE

It is stipulated that the owner of the Respondent, John Anderson, on May 21 informed employees assembled at one of the Respondent's preelection campaign meetings that the Union could fine them up to the full amount they earned if they crossed a picket line, and that Anderson did not differentiate between members and nonmembers in his comments. Earlier at the same meeting, Cutright correctly informed the assembled employees that such fines could be imposed by a union upon employees if they crossed a picket line and were union members.

Counsel for the General Counsel maintains in her brief that Anderson's comment to the employees arguably contained an incorrect statement of the law; that is, that a union could fine employees who crossed a picket line, without regard to membership status, and further maintains that in the context of that meeting and the Respondent's other unfair labor practices, Anderson's comment is coercive and violates Section 8(a)(1). In fact, Anderson's comment was a misstatement of the law. *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of North America, Local 1029, AFL–CIO*, 409 U.S. 213, 217 (1972).

The Respondent, in its brief, and as part of a motion to dismiss substantive paragraphs of the complaint dealing with this allegation, argues that even if it incorrectly informed employees that the Union could fine them for crossing a picket line, regardless of their membership status, "at most, the alleged statements…could be characterized as non-actionable misstatements of fact or law made in the course of an election campaign." The Respondent cites the Board's discussion of campaign propaganda in *Midland National Life Insurance Co*, 263 NLRB 127, 133 (1982), and cites *John W. Galbreath & Co.*, 288 NLRB 876 (1988) as being analogous to the instant matter. Counsel for the General Counsel responds that nothing in the Board's *Galbreath* decision immunized "coercive statements from being found to be violations of Section 8(a)(1)."

In my view, the Respondent has the better argument here. In *Metropolitan Life Insurance Company*, 266 NLRB 507 (1983), a case with a somewhat analogous set of facts as to this issue, the Board, citing *Midland*, refused to order a new election and concluded that the employer's misstatement as to fining employees for crossing a picket line was clearly a misrepresentation of the law, but because the statement occurred in the context of a meeting called as part of the employer's campaign against the union, the employees "could evaluate...comments for what they were—propaganda." And in *Laverdiere's Enterprises*, 297 NLRB 826, fn. 4 (1990), the Board, in discussing *Metropolitan Life Insurance*, held, "Inasmuch as such misrepresentations in general are not objectionable under the *Midland* standard, it follows, a fortiori, that they do not violate Section 8(a)(1)." Even considering the context of Anderson's misrepresentation, as urged by counsel for the General Counsel, I note that at the very same meeting, Cutright correctly stated the law; that is, that only union members can be fined by a union for crossing its picket line. Under all of these circumstances, I conclude that Anderson's comment, albeit a misrepresentation of the law, was simply preelection propaganda, which could be recognized as such by the employees, and not a violation of Section 8(a)(1).

ALLEGATIONS INVOLVING DISTRIBUTION OF UNION LITERATURE BY CUTRIGHT

I credit current employee Stuart Baker's testimony as to his observations concerning Cutright removing literature from the break room. Baker testified consistently with good recall. and forthrightly answered questions both on direct and cross examination. Additionally, Baker is a current employee with no direct financial interest in the outcome of this litigation. See Georgia Rug Mill, supra. For reasons set forth above, I further credit the testimony of current employee Danny Piersall and former employee Barbara Eckert as to their observations of Cutright removing literature from the break room. Contrariwise, while Cutright denied that he ever prohibited employees from placing union literature in the break room, he did not refute the testimony concerning his removing union literature from the break room. Accordingly, I conclude that on two occasions in April or May, Cutright removed about 20 to 40 pieces of union literature from tables in the break room, placed there about 30 minutes earlier by Baker. I further conclude that on May 22, the day before the Board election, Cutright picked up union flyers from the tables in the break room, placed there earlier by Eckert, and threw the flyers away; this at the same time Cutright was distributing to employees copies of the Respondent's own newsletter. Additionally, I conclude that in mid-May, Cutright picked up a stack of 50 to 75 union flyers in the break room and threw them away.

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BY SELBY

For the reasons set forth above, I credit the testimony of current employee Stuart Baker that on two occasions during the election campaign Scott Selby removed union literature from the break room, literature placed there shortly before by Baker. Selby testified that once or twice during the campaign he removed union literature from the cork bulletin board pursuant to the Respondent's posting policy, but did not directly refute Baker's testimony. Accordingly, I find that on two occasions in April or May, Selby went from table to table in the break room, making stacks of the union literature placed there minutes earlier by Baker, and then removed and disposed of the literature.

By Cobb

For the reasons set forth above, I credit the testimony of current employees Stuart Baker, Jason Brown,⁸ and Danny Piersall, and former employee Antonio Wallace, all of whom testified that on various occasions during the election campaign they observed Cobb remove union literature from the break room. Cobb admitted removing union literature from the break room on various occasions during April and May, testifying that he removed the literature in an effort to keep the break room clean.

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By Booker

Again, and for the reasons set forth above, I credit the testimony of former employee Barbara Eckert, that on April 12, Booker read a piece of union literature in the break room, then proceeded to gather about 70 neatly stacked pieces of the literature from break room tables, and threw them into the garbage. I find that upon being asked by Eckert why he was disposing of the union flyers, Booker told Eckert that "Mike [Cutright] does not want these in here because they are union solicitations." While Booker denied that he gathered and disposed of union flyers on April 12, or that he told Eckert that he had been instructed to throw away union flyers.

⁸ See *Georgia Rug Mill*, supra.

Eckert, a former employee with no financial stake in the instant litigation, had no apparent reason to concoct her testimony, and Booker, a supervisor, while denying the April 12 date, admitted on cross examination that he had removed union literature from the break room on other occasions. Finally, Booker sometimes haltingly responded to questions on cross-examination, frequently glancing at counsel for the Respondent before answering the questions.

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CONCLUSION AS TO REMOVAL OF UNION LITERATURE9

The Respondent argues that, to the extent union literature was removed from the break room, it was removed to prevent litter in the break room. The Respondent also maintains that employees had ample access to union materials in that such flyers were common throughout the facility. However, the extensive efforts engaged in by numerous supervisors, including higher management, detailed above, including removing neatly stacked union literature from break room tables and placing the Respondent's own publication in the break room at the same time the union literature was being removed, goes beyond merely keeping the break room tidy, and demonstrates a pattern of aggressively and systematically removing prounion literature, sometimes in the presence of employees. These actions clearly serve to coerce employees in their exercise of Section 7 rights, whether or not the employees had other access to literature, and violate Section 8 (a)(1). See *Ishikawa Gasket American, Inc.*, 337 NLRB 175 (2001), and *Venture Industries, Inc.*, 330 NLRB 1133, 1134 (2000). See also *Vemco, Inc.*, 304 NLRB 911 (1991).

IMPLEMENTATION OF NEW BENEFITS

Counsel for the General Counsel maintains that the Respondent's implementation of the new attendance policy and new employee discipline appeals process, in the context of the Union's organizational campaign, violated Section 8(a)(3). The Respondent maintains that its implementation of these two new policies was unconnected to the Union's campaign and, thus, did not violate the Act. The Board has long recognized that the danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove: "Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." B & D Plastics, Inc., 302 NLRB 245 (1991), quoting from NLRB v. Exchange Parts Co., 375 U.S. 405, 409 (1964). The Board's standard in preelection benefit cases is an objective one. See Gulf States Canners. 242 NLRB 1326 (1979). The Board examines the size of the benefit conferred in relation to the stated purpose in granting the benefit, the number of employees receiving the benefit, how employees reasonably would view the purpose of the benefit, and the timing of the benefit. B & D Plastics, Inc., supra. The Board infers that benefits granted during the critical period are coercive, but permits the employer to come forward with evidence demonstrating a non-violative reason for the granting of the benefit. See Speco Corp., 298 NLRB 439 fn. 2 (1990).

Here, the new attendance policy, predominately an improvement for employees over the existing policy, was implemented about March 1. The new discipline appeals procedure was announced to employees at the same meeting as the new attendance policy in February, but

⁹ Counsel for the General Counsel also argues that Respondent, by its actions in discriminatorily removing union literature from the break room and associated comments of supervisors, in effect, imposed a rule prohibiting such distribution in the break room. The record contains little direct evidence to support the actual imposition of such a rule by Respondent. In any case, such a violation would be cumulative of the findings, and would not substantially change the remedy. I decline to find such an additional violation.

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was not implemented until April 1. Employees were told at the announcement meeting that the new appeals procedure would be close to a union grievance procedure.

Under all the circumstances, including the numerous violations of Section 8(a)(1) found above, the additional evidence of animus including the extensive campaign against the Union which included regular periodic meetings, the credited testimony of employee Piersall that when management announced the new discipline appeals process employees were informed it would be close to a "union grievance procedure," and the timing of the implementation of the benefit improvements in March and April during the run-up to the filing of the petition and the representation election conducted on May 23, I conclude that the benefit improvements instituted by the Respondent coerced employees in the exercise of their Section 7 rights and, in fact, were intended to have the effect of discouraging support for the Union. Thus, the benefit improvements were significant and were provided to all unit employees, and in the context of the Respondent's antiunion campaign would reasonably be viewed by employees to be for the purpose of encouraging employees to support the Respondent's campaign.

I reject the Respondent's arguments to the effect that the timing of the benefit improvements in relation to the Union's organizational campaign was merely coincidental. As noted in counsel for the General Counsel's brief, in January, the Respondent had promoted Cutright to general manager of both the Fort Wayne facility involved, and its Grand Rapids, Michigan facility, where a Board election petition had been filed that same month. While I credit Selby's testimony that he began working on a new attendance policy in December 2001, I also note that Selby testified that a final decision to change the attendance policy was not made until January 2002, a time coinciding with the organizational activity and petition filing in Grand Rapids, and organizational activity at Fort Wayne, which both Selby and Cutright testified they were aware of. In the overall context discussed above, I conclude that it is far more likely that the Respondent instituted these benefit improvements to affect its employees' perceptions of the organizational campaign, than the explanation of Cutright that he decided on the improved discipline appeals process because he was concerned about consistency in enforcing rules, and Selby's testimony that he created an improved attendance policy because he felt the old policy didn't "give the employees a true opportunity to use that time that was supposed to be personal time." See Camvac International, Inc., 288 NLRB 816, 818 (1988). This is particularly true where, as here, the Respondent committed other violations of the Act in carrying out its ongoing campaign against union organization, and the Respondent was aware of employee unhappiness with its existing policies.

CONCLUSIONS OF LAW

- 1. The Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
 - 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 3. About early April, mid-April, May 16, and May 21, 2002, the Respondent interfered with, restrained, and coerced employees in the exercise of Section 7 rights, thereby violating Section 8(a)(1), by threatening employees with increased production rates, loss of jobs, and loss of wage and benefit increases, if they chose the Union to represent them for collective-bargaining.
- 4. On numerous occasions in April and May, 2002, the Respondent interfered with, restrained, and coerced employees in the exercise of Section 7 rights, thereby violating Section 8(a)(1), by removing union literature from the break room/cafeteria.

- 5. On March 1, 2002, the Respondent, by implementing an improved attendance policy benefit, and on April 1, 2002, by implementing an improved employee discipline appeals procedure benefit, discriminated against employees in violation of Section 8(a)(3), in order to discourage union activities.
- 6. The allegations of the complaint that the Respondent violated Section 8(a)(1) by coercively interrogating employees and by misstating the law as to the ability of unions to impose fines for crossing a picket line, have not been supported by substantial evidence.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁰

ORDER

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The complaint allegations that the Respondent violated Section 8(a)(1) by interrogating its employees concerning their union activities and by misstating the law as to the ability of unions to impose fines for crossing a picket line shall be dismissed.

The Respondent, Trinidad Logistics Company, L.P., Fort Wayne, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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- (a) Implementing improved benefits or otherwise discriminating against employees because they engage in union activities or to discourage employees from engaging in such activities.
- (b) Removing union literature from the break room/cafeteria, threatening employees with retaliation if they choose a union to represent them for collective-bargaining, including threats of increases in production rates, loss of jobs, and loss of wage and benefit increases, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
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- 2. Take the following affirmative action necessary to effectuate the policies of the Act
- (a) Within 14 days after service by the Region, post at its facilities in Fort Wayne, Indiana, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that notices are not altered, defaced, or covered by any other materials. In the event

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¹⁰ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the Board shall, as provided in Section 102.48 of the Rules, adopt the findings, conclusions, and recommended Order and all objections to them shall be deemed waived for all purposes.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

5	closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all employees and former employees of the Respondent at any time since March 7, 2002.		
	(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.		
10	Dated, Washington, D.C.		
15	Mark D. Rubin Administrative Law Judge		
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that, during the pendency of these proceedings, the Respondent has gone out of business or

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with loss of jobs, loss of wage and benefit increases, or increase in production rates if you choose to be represented by a union.

WE WILL NOT remove literature in support of a union from our break room/cafeteria.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL NOT, in the course of our opposition to a union organizational campaign, grant you increased benefits including an improved discipline appeal procedure or improved attendance policy in order to discourage support for the union, or in any like or related manner discriminate in regard to hire or tenure or terms or conditions of your employment, for the purpose of discouraging membership in a union.

		TRINIDAD LOGISTICS COMPANY, L.P.		
		(Employer)		
Dated	Ву			
		(Representative)	(Title)	

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

575 North Pennsylvania Street, Federal Building, Room 238, Indianapolis, IN 46204-1577 (317) 226-7382, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (317) 226-7413.